

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

Dr. Nancy Sebring,)	
)	
Plaintiff,)	Case No. CE-71688
)	
v.)	Des Moines Register
)	and Tribune Company's
The Des Moines Independent)	Resisted Petition
Community School District,)	for Intervention
)	
Defendant;)	(Oral Argument Requested)
)	
Des Moines Register)	
and Tribune Company,)	
)	
Intervenor.)	

FILED
POLK COUNTY, IA.
12 JUN -8 PM 4:03
CLERK DISTRICT COURT

COMES NOW, Des Moines Register and Tribune Company (the "Register") and files this Resisted Petition for Intervention.

In support of its application to proceed as a party adverse to Plaintiff Dr. Nancy Sebring ("Plaintiff" or "Sebring") in this lawsuit she filed against Defendant Des Moines Independent Community School District ("Defendant" or the "District"), the Register states:

1. The Register publishes *The Des Moines Register*, a six times per week daily newspaper, and the *Des Moines Sunday Register*. Through those newspapers of general circulation, its www.desmoinesregister.com news site and its other web based and specialty publications, the Register disseminates news, information and comment to the public.

2. The Register and the public have a direct and substantial interest in the subject matter of this litigation and in continuing access to public records, the performance and

workplace conduct of public officials such as Sebring and actions taken by governmental entities such as the District.

3. The Register further serves the public by keeping its readers informed about the operation of government, use of tax supported facilities, expenditure of public monies and other matters of public interest or concern.

4. The Register regularly relies on the inspection, copying and access rights afforded to it and every member of the public under Iowa Code Chapter 22 (2011), the *Iowa Open Records Act*. Such reliance and such access are at the core of this lawsuit.

5. The District constitutes a school corporation funded by taxpayer monies that is a government body as defined by Iowa Code §22.1(1).

6. Plaintiff, who the District formerly employed as a public official holding its top leadership position of superintendent of schools, commenced this lawsuit on June 4, 2012, by filing a Petition for Declaratory and Injunctive Relief Pursuant to Iowa Code Section 22.8 (the “Petition”).

7. Sebring’s Petition seeks extraordinary declaratory and injunctive relief that would condition, delay or bar access by the public and the news media, including the Register, to records and information that belong to and/or remain in the possession and custody of the District.

8. Sebring’s Petition requests that the District be barred from complying with the *Iowa Open Records Act* and be prohibited from providing the Register certain public records as defined in Iowa Code §22.1(3) unless Defendant first discloses to her the access requests of the

Register and affords her the ability, as a person now fully outside of government, to review and delay such access requests.

9. Thus, Sebring asks this Court to grant her special, personal rights in derogation of the general access rights afforded to the public and the press, including the Register, under the *Iowa Open Records Act*.

10. Effectively, Plaintiff requests a judge-created right of advance knowledge of certain public records requests to Defendant whenever the Register or any other member of the public or the press seeks access to documents and information she thinks she should control and even though those documents were:

- (a) Generated, transmitted, stored and/or retained at government expense, using the District's equipment and resources;
- (b) Created, sent, and/or received by Sebring as the chief executive of the District while receiving compensation to work for the benefit of the District and the students and taxpayers it serves; and/or,
- (c) Relevant to possible violation of District rules, policies or regulations, or errors, omissions, or misconduct by Sebring or other public employees.

11. Further, Sebring seeks to have this Court serve as an overseer of the disclosure of public records to the Register and every other member of the public and the press, and possible censor, anytime the documents or information contain what she alleges is "Personal Communications."

12. Yet, Sebring's Petition misdirects the Court by referring to public records in the custody, possession or care of the District as "Personal Communications" because the

documents and information in issue instead are public records not exempt from disclosure to the press and the public under Iowa Code §22.7.

13. Sebring's Petition further omits the fact that no provision of the *Iowa Open Records Act* was enacted by the General Assembly or exists to provide blanket exclusion for workplace communications or to make personal privacy a trump card that defeats access rights and government accountability as guaranteed by that statute.

14. As a result, the extraordinary injunctive relief sought by Sebring, if not intended to, would in fact thwart transparency and accountability in government and of top government officials as it overruled express legislative policy pronouncements and statutory processes and requirements.

15. Additionally, if the relief sought by Sebring were granted, this Court would be vesting Plaintiff, in concert with the Judicial Branch, with unprecedented power to delay or veto access by the public and the press, including the Register, to government documents and information in clear disregard of the language and purposes of the *Iowa Open Records Act*.

16. As Sebring notes in her Petition at ¶¶8, 11, the Register has made several public records access requests pursuant to Iowa Code Chapter 22 seeking to inspect and copy or otherwise obtain documents and information of, belonging to or in the possession of the District and its lawful custodian(s) of public records.

17. At the time of its May and June 2012 access requests and at all times thereafter, the Register has held and sought to exercise inspection and copying rights pursuant to Iowa Code §22.2 for access to the public records in issue in this case.

18. The District has provided some documents that are responsive to these open records requests and has indicated that it will disclose additional public records to the Register to fulfill these or additional access requests it has made or may make.

19. Plaintiff's effort to prevent timely and continued press and public access to government documents and information generally relates to emails authored or received by her while working as the District's superintendent. Thus, her Petition alleges that "a *de minimus* number of these emails were of a purely personal nature and the content of said emails is of no public interest." Petition ¶4.

20. Sebring's Petition and its personal privacy claims omit reference to policies of the District relevant to and dispositive of her privacy and ownership claims.

21. The District policies, among other things, state:

- (a) "Communication over networks should not be considered by employees to be private."
- (b) "The district's network administrator(s) or other administrators from time to time may examine all computers and computer network activities and review directories, messages and files to ascertain compliance with network guidelines for acceptable use."
- (c) "Employees shall communicate with telecommunications tools in a professional manner consistent with the law and district policies, including those governing the behavior of school employees and federal laws governing copyrights, confidentiality of employee records, student records and other information confidential under the law."

See District's Policies and Procedures, Series 400, Code 445, available at

<http://www.dmschools.org/board/administrative-policies-and-procedures/series-400/#proc445>

22. Chart A, which follows, is one page of a set of public records produced by the District to the Register in response to an *Iowa Open Records Act* request. [Materials that are marked out in white are redactions made by the District. Materials that are marked out in black are redactions made by the Register.]

Chart A

From: Sebring, Nancy
Sent: Wednesday, May 02, 2012 9:02 AM
To:
Subject: RE: HI

Good morning! I'm sorry that I didn't get an email to you yesterday. My life gets a little more bizarre each day in my world of work...lots of confusion and stress for Board members who are in conflict about hiring the next (Interim) superintendent. After getting home from the Board meeting last night, around 10:00, I got back-to-back calls from two of the veteran board members to complain about the board president and what she is, or is not, doing. She does seem to be dragging her feet, for reasons unknown (though I have my theories) and it is getting increasingly difficult to keep the Board focused and productive. Lately it has seemed to consume most of my time, thus my REAL work is pushed aside and I'm getting increasingly frustrated about that!!! There are only a few more weeks of this, and I am determined to make this transition positive for everyone...but I can see that it won't be easy.

I have a meeting at 9:00, but wanted to send a quick email to let you know I was thinking about you. I'm so happy to hear that you want to continue our relationship after I move...I truly don't want this to end. I think it can work out. What we may lose in quantity will be made up in quality!! I also enjoy being "experimental." I love the sense of adventure I feel when I am with you (maybe that's not the best word, but I hope you know what I mean.) It has brought me joy, something largely missing in my life. And I appreciate our friendship. I like talking with you, and listening to you and laughing with you. You have taught me to think about some things differently, which is a good thing, and I hope that you realize that I am your friend, and would never betray your trust.

Also, on another note, last night in bed I couldn't stop thinking about how exciting it was when you [REDACTED] and [REDACTED]....OMG, just thinking about it gets my heart racing!!! I will be [REDACTED] every time you see me from now on!!!

I hope you have a good day...I am meeting with the CEO of the Omaha World Herald this morning, and he's bringing a couple of other business leaders from Omaha with him. He requested the meeting, and I'm anxious to hear what they have to say...could be interesting.

I have been thinking about your comments about church and God...I want to talk about that later.
Take care,
Nancy

23. A more extensive set of the public records produced by the District and in issue in this litigation is available at <http://s3.documentcloud.org/documents/365761/nancy-sebring-personal-emails.pdf>.

24. Sebring seeks judicial empowerment through this lawsuit so that going forward she could control how, when or whether the documents and information such as that in Chart A would be released.

25. Chart A typifies the public records that Plaintiff characterize as a *de minimus* email; yet, that record shows that the subject matter of documents covered by the public records requests of the Register are:

- (a) “Public records” under Iowa Code §22.1(3);
- (b) In the possession and custody of the District as a government body as defined by Iowa Code §22.1(1);
- (c) Were requested from the District as a “lawful custodian” under Iowa Code §22.1(2); and
- (d) Contain information relating to government operations, compliance, accountability and use of taxpayer equipment, resources and money, all items of profound and legitimate public interest.

26. Plaintiff’s Petition alleges news coverage resulting from the release of the emails by the District and publication of their content caused her personal and professional damage. *See* Petition ¶16.

27. Sebring's lawsuit also alleges that the disclosure of the information contained in the public records requests of the Register "would not be in the public interest." See Petition ¶19.

28. Sebring's lawsuit seemingly ignores the context of the proceedings and the nature and importance of recent events that led to closed meetings by the District's Board, to the resignation of Sebring from two superintendent positions and to the questioning by the public of the competence and accountability of the persons charged with running Iowa's largest public school system.

29. While Sebring alleges at paragraph 17 of the Petition that the facts of her case place it outside the general precept that "free and open examination of public records is generally in the public interest," her lawsuit failed to quote the full passage of the pertinent Iowa Code section, which states, "free and open examination of public records is generally in the public interest *even though such examination may cause inconvenience or embarrassment to public officials or others.*" See Iowa Code §22.8(3) (emphasis added).

30. The public interest in the information and public records of the District in part is evidenced by the national news coverage and public comment of recent events involving the District and Sebring.

31. The Register's own news coverage of those events is collected at http://www.desmoinesregister.com/section/NEWS&keyword=Nancy_Sebring_Resignation.

32. Other coverage of those events includes that of *The Los Angeles Times*, <http://www.latimes.com/news/nation/nationnow/la-na-nn-des-moines-superintendent-20120603,0,4221888.story>, and of KDVR-TV in Denver, <http://kdvr.com/2012/06/05/103209/>.

33. The public records in issue themselves and in combination with press reports and public comment about them establish that there is a substantial public interest in and concern over their content and as well as in the accountability, transparency and public awareness fostered by the District's compliance with Iowa Code Chapter 22 through disclosure of public records in its possession.

34. This follows because the public policy of this state and the policy of Iowa Code Chapter 22 are, as noted above, "that free and open examination of public records is generally in the public interest even though such examination may cause inconvenience or embarrassment to public officials or others." Iowa Code §22.8(3).

35. Further, the Iowa Supreme Court has explained that the open records statute's "purpose is 'to open the doors of government to public scrutiny to prevent government from secreting its decision-making activities from the public, on whose behalf it is its duty to act.'" *Northeast Council on Substance Abuse, Inc. v. Iowa Dep't. of Pub. Health*, 513 N.W.2d 757, 759 (Iowa 1993).

36. Sebring's evidence of a lack of public interest in the release of the records in issue, if any, is insufficient to warrant injunctive relief and her request for special status is undermined by the fact that many of the responsive documents, exemplified by Chart A, already have been released by the District.

37. Sebring's lawsuit also alleges that the disclosure of the information contained in the public records requested in May and June 2012 by the Register would cause her "substantial and irreparable harm." *See* Petition ¶19.

38. Sebring's evidence of such a substantial and irreparable harm resulting from public access to the records in issue, if any, is insufficient to warrant injunctive relief and her request for special status is undermined by the fact that many of the emails she seeks to control already have been produced in public records releases by the District that occurred prior to June 4, 2012, the date the Petition was filed.

39. To the extent, if any, that Sebring's lawsuit seeks to require the District to exercise its discretion to keep public records confidential under Iowa Code §22.7, she lacks standing for such a claim because that provision permits such otherwise confidential documents to be released upon the order of any lawful custodian who may remain willing and desirous of releasing the records and information Sebring seeks to keep secret.

40. By virtue of the Petition, and as detailed in the preceding paragraphs, Sebring's Petition seeks a Court declaration that would directly and adversely affect the rights and interests of the Register.

41. Therefore, the Register has a direct and substantial interest in the subject matter of this litigation and in continuing access to public records and actions taken by governmental entities such as the District on matters of public concern.

42. As a result, the Register is a real party in interest in this litigation, adverse to Sebring and potentially aligned with or adverse to the District.

43. The Register has a clear and direct interest in the subject matter of this litigation and its outcome.

44. Accordingly, the intervention of the Register is proper under Iowa R. Civ. P. 1.201, 1.234 and 1.407.

45. In addition, pursuant to Iowa R. Civ. P. 1.407(1)(a), the Register is entitled to intervene in this action as a matter of right. Iowa Code §22.8 unequivocally states that a party requesting records pursuant to the *Iowa Open Records Act* is entitled to notice any time a party, such as Sebring, seeks an injunction under Iowa Code §22.8.

46. As a matter of due process and statutory construction, the Register, as the party initially requesting public records from the District and the party directly affected by keeping them secret, is entitled to notice and an opportunity to be heard in any proceeding seeking an injunction under Iowa Code §22.8.

47. Intervention of the Register will provide the only meaningful opportunity for the private interests of Sebring to be opposed, and the interests of the Register, the public and the press to be vindicated.

48. The intervention of the Register should be permitted in this case pursuant to statute, the Iowa Rules of Civil Procedure, fundamental notions of due process and the interests of justice.

49. To the extent it acknowledges and advocates: (a) for the public and the Register's rights of continued access to public records, (b) for openness in government and/or the release of the records Sebring prefers be kept secret, and (c) against the procedures and outcome sought by Sebring, the Register incorporates the District's Answer to Petition for Declaratory Relief Pursuant to Iowa Code Section 22.8, filed on June 7, 2012, here by this reference as though filed by it with this Resisted Petition for Intervention.

50. The undersigned has communicated by email with the attorney for Plaintiff, who advises that Sebring resists this Petition to Intervene.

51. The undersigned has communicated by email with the attorney for Defendant, who advises that the District does *not* resist this Petition to Intervene.

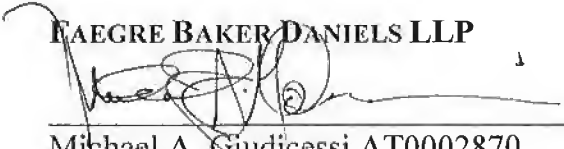
52. The Register requests the right to be heard orally on this intervention request.

WHEREFORE, Des Moines Register and Tribune Company requests that before proceeding further in this case, this Court set this petition for hearing, and after such hearing, that the Court:

- A. Grant the Register's Resisted Petition for Intervention;
- B. Order the Clerk to change the caption in this matter to reflect Des Moines Register and Tribune Company is a party intervenor;
- C. Require that the parties include Des Moines Register and Tribune Company in the service of all pleadings and filings in this matter, allow it to participate fully in all scheduling and case management conferences, and provide it equal opportunity to be heard in any proceedings and to present evidence and argument in this case;
- D. Provide Des Moines Register and Tribune Company 20 days from the entry of the Order granting this Intervention motion to file its initial responsive pleadings to the Petition; and
- E. Deny the Petition in a timely manner so that further delay of access to the public records in question is not caused or permitted by the existence or pendency of this lawsuit.

Dated: June 8, 2012.

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**Attorneys for Intervenor,
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Company**

Certificate of Service

The undersigned certifies that a true copy of the foregoing **Des Moines Register and Tribune Company's Resisted Petition for Intervention** was served upon one of the attorneys of record for each party to the above entitled cause by enclosing the same in an envelope addressed to each such attorney at his/her last known address as shown below, by U.S. Mail delivery and by e-mailing a copy of the same to each below listed counsel on the 8th day of June, 2012.

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